

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

FOREMOST FRESH DIRECT, LLC, a  
Texas limited liability company,

Plaintiff,

v.

CHANDLER TOPIC COMPANY, INC., a  
Minnesota corporation,

Defendant.

Case No. 1:22-cv-00926-JLT-BAM

**ORDER GRANTING PLAINTIFF'S  
SECOND *EX PARTE* APPLICATION TO  
EXTEND TIME FOR SERVICE OF  
SUMMONS AND COMPLAINT**

(Doc. 8)

**ORDER CONTINUING STATUS  
CONFERENCE**

Currently before the Court is the second *ex parte* application of Plaintiff Foremost Fresh Direct, LLC ("Plaintiff") to extend the time for service of the summons and complaint on Defendant Chandler Topic Company, Inc., a Minnesota corporation. (Doc. 8.)

Rule 4 of the Federal Rules of Civil Procedure governs the time limit for service of the summons and complaint and provides, in relevant part, as follows:

If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Fed. R. Civ. P. 4(m). Thus, a showing of good cause requires the Court to grant an extension of time for service. *Id.* However, absent a showing of good cause, the Court also has discretion under Rule 4(m) to either order that service be made within a specified time or to dismiss the

1 action without prejudice. *See id.*; *In re Sheehan*, 253 F.3d 507, 513 (9th Cir. 2001) (“[U]nder the  
2 terms of the rule, the court’s discretion is broad.”).

3 The Court previously extended the deadline for service to December 23, 2022. (Doc. 6.)  
4 Since that time, Plaintiff has not served Defendant Chandler Topic Company, Inc. According to  
5 Plaintiff, counsel has researched possible addresses and determined that to serve Defendant  
6 through the Minnesota Secretary of State, Plaintiff must attempt service on the address for  
7 service on file with the Minnesota Secretary of State. The address on file is 10057 73rd Avenue  
8 N., Maple Grove, MN 55369. (Doc. 8 at 3.) On January 23, 2023, Plaintiff requested that a  
9 process server serve at this address. If Plaintiff is unable to serve Defendant at this address, then  
10 Plaintiff will likely arrange for service through the Minnesota Secretary of State. (*Id.*) Plaintiff  
11 seeks an additional sixty (60) days to effectuate service.

12 Having considered the *ex parte* application and supporting declaration, the Court finds  
13 good cause to grant a second extension of Plaintiff’s time to serve Defendant. Accordingly, IT  
14 IS HEREBY ORDERED:

15 1. Plaintiff’s Second *Ex Parte* Application to Extend Time for Service of Summons  
16 and Complaint is GRANTED (Doc. 8), and the time for Plaintiff to serve Defendant with the  
17 summons and complaint is extended to March 24, 2023; and

18 2. Based on the extension of time, the Status Conference currently set for 1/26/2023,  
19 is HEREBY CONTINUED to **April 27, 2023, at 9:00 a.m. in Courtroom 8 (BAM) before**  
20 **Magistrate Judge Barbara A. McAuliffe**. The parties shall appear at the conference remotely  
21 with each party appearing either via Zoom video conference or Zoom telephone number. The  
22 parties will be provided with the Zoom ID and password by the Courtroom Deputy prior to the  
23 conference. The Zoom ID number and password are confidential and are not to be shared.  
24 Appropriate court attire required.

25  
26 IT IS SO ORDERED.

27 Dated: January 24, 2023

28 /s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE